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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1934

No. 465

ALASKA PACKERS ASSOCIATION (a corporation),

Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA,

Appellees.

BRIEF FOR APPELLEES

Appeal from the Supreme Court of the State of California

JURISDICTION

Although this court in the cases of *Bradford Electric Co.* vs. *Clapper,* 286 U. S. 145, and *Ohio* vs. *Chattanooga Boiler Co.,* 289 U. S. 439, has concluded that the "full faith and credit" clause of the United States Constitution may apply under

certain circumstances where the workmen's compensation statutes of two states are brought into question, appellees respectfully submit that the said clause does not apply to the particular circumstance involved in this case and that a Federal question therefore is not properly involved. Appellees believe that the question presented by the case is essentially one in the conflict of laws and respectfully submit that the case has been decided correctly on those principles.

STATEMENT OF THE CASE

There are one or two statements of fact made by appellant under the headings "Question Presented" and "Statement" that appellees wish to correct; otherwise the statement of facts is substantially as recited by appellant.

The contract of employment was not made on board ship as stated by appellant (appellant's brief, p. 2), and as erroneously stated in the opinion of the Supreme Court (R. 66). The testimony of Juan Palma definitely shows that the contract was signed on the wharf and not aboard ship (R. 44, 47).

The statutes of California and Alaska are not "exclusive" as will be shown hereinafter.

As to the statement that Palma was a nonresident of California, the record is silent as to how long Palma had been in California and shows merely that he said that his home was in Jalisco, Mexico.

It may be noted at this time that no question is raised in this case as to the propriety of the holding of the Supreme Court of California in this case that section 58 of the California Workmen's Compensation Act applies to a *nonresident* alien. (See appellant's brief, p. 12, note.)

SUMMARY OF THE ARGUMENT

It is the contention of appellees that the award in this case and the construction of the California statute under which that award was sustained by the Supreme Court of California are not contrary to the Constitution and statutes of the United States for the following reasons:

A. No Denial of Full Faith and Credit.

In the case of *Bradford Electric Co.* vs. *Clapper,* 286 U. S. 145, this court for the first time, we believe, applied the full faith and credit clause of the United States Constitution to a situation involving a conflict between the workmen's compensation acts of two states. That case was followed by the case of *Ohio* vs. *Chattanooga Boiler Co.,* 289 U. S. 439, in which the question of full faith and credit in such a situation was again discussed. Appellant contends that the principle of those two cases applied to the case at bar leads to the conclusion that the award of the Industrial Accident Commission of California and the decision of the Supreme Court of California affirming such award

constitute a denial of full faith and credit to the laws of the Territory of Alaska.

It is the contention of appellees that on full faith and credit principles the award of the California Industrial Accident Commission and the decision of the California Supreme Court are not inconsistent with the holdings of this court in the *Bradford* case and in *Ohio* vs. *Chattanooga Boiler Co., supra;* that those cases in fact support the holding of the California Industrial Accident Commission and the California Supreme Court, and that there is, therefore, no denial of full faith and credit in this case.

In the first place, as is clearly shown in the opinion in the *Bradford* case, and more clearly pointed out in the opinion in the *Ohio* vs. *Chattanooga Boiler Co.* case, the *Bradford* case was strictly limited to State statutes which are "exclusive" as to injuries occurring abroad, that is, statutes which by their own unequivocal terms or by judicial interpretation of the State courts preclude recovery in proceedings brought in one State for injuries received in another State in the course of an employment in which the State of injury had only a casual interest. But neither the California act nor the Alaska act, which are the ones involved in this case, is exclusive. Neither the California act nor the Alaska act contains the peculiar wording of the Vermont act, which was held by this court to be "exclusive." The California Supreme Court in its opinion in this case

has clearly interpreted the California act as not being "exclusive," for it held that both the laws of California and Alaska could be upheld. Nor has appellant pointed to any opinion of the courts of the Territory of Alaska to the effect that the Alaska act is "exclusive." It is therefore clear that California was not bound to recognize the law of Alaska on the ground that it was "exclusive," as in the *Bradford* case; on the contrary, the *Ohio* vs. *Chattanooga Boiler Co.* case supports California in applying her own law since the law of the other jurisdiction was not "exclusive." Therefore, appellant's argument relative to the "exclusiveness" of the statutes must fail.

Moreover, in addition to dealing with an "exclusive" statute in the *Bradford* case, this court was considering a case in which the major incidents of the employment were located in the State of contract while the State of injury had only a casual interest. In relation to that point, we submit that while all of the labor to be performed in this case was to be performed in Alaska, the State of injury, nevertheless a sufficient number of the major incidents of the employment occurred within the territorial boundaries of California to give California as much as, if not a greater, interest in the employment than Alaska. The California Supreme Court points out that it limits its opinion to the peculiar type of case before it, and that in view of the fact that California had control of the status or relationship at its inception, together with certain

other incidents of the employment, it concluded that these incidents were a sufficient jurisdictional basis for California to have jurisdiction of the case though the injury occurred in another State.

Feeling as it did, that in this exceptional type of case sufficient incidents of the employment existed in California to give California jurisdiction over the relationship although the injury occurred in another State, the California Supreme Court felt that its decision conflicted neither with the *Bradford* case nor the *Ohio* vs. *Chattanooga Boiler Co.* case and that, therefore, the case could and should be decided on conflict of laws principles. And on conflict of laws principles, the law of the place of contract may govern in such a situation.

Nor does the fact that the California act is compulsory alter the situation in the least, for it is now well settled that the California act may apply to injuries received outside the State. (*Quong Ham Wah* vs. *Ind. Acc. Com.*, 184 Cal. 26, 192 Pac. 1021, certiorari denied by United States Supreme Court, 255 U. S. 445.) For these reasons we submit that there is no constitutional problem relative to the full faith and credit clause presented in this case and the only problem involved is one in the conflict of laws.

B. No Denial of Due Process.

Appellees submit that there is no denial of due process merely by reason of the so-called "extra-territorial" application of a statute, and appellant

cites no cases in which such a principle has been enunciated.

Under this heading appellant again contends that California can not extend its compulsory Workmen's Compensation Act to cover injuries occurring in the course of seasonal employment in Alaska. That no distinction is made between compulsory and elective statutes with respect to their "extra-territorial" application is clear. (*Quong Ham Wah* vs. *Industrial Accident Commission,* 184 Cal. 26, 192 Pac. 102, 255 U. S. 445; 3 A. L. R. 1351.)

Appellant contends that the award invalidated the contract of the parties that the law of Alaska should govern, and that such invalidation is a denial of due process. It is clear, however, that any such agreement where an employee attempts to absolve himself as to purely local employments is invalid (section 27 (a) California Workmen's Compensation Act; *Terminal Railways* vs. *Industrial Accident Commission,* 180 Cal. 121, 127; *Hines* vs. *Industrial Accident Commission,* 182 Cal. 359). In applying section 27 (a) of the California act to the employment in question we are returned to our original premise that, since at least half of the major incidents of the employment are located in California, the employment is subject to California control although work abroad is contemplated. The same duties and rights which are imposed as incidents to acts occurring within the geographical limits of the State may be imposed as incidents to acts abroad and no principle of law is defeated by so doing. (*Quong*

Ham Wah vs. *Industrial Accident Commission, supra.*)

C. No Interference with Federal Control of Territories.

As already shown, California has not attempted an invasion of the sovereignty of Alaska; it has merely assumed control over an employment which it considered to be a California employment by reason of certain important incidents of that employment which were located within the State. The argument under this heading, therefore, leads back to the same point already considered under the foregoing headings.

Moreover, we are dealing here with an "organized" territory and not with land held by the Federal government for military or naval purposes; the cases cited by appellant dealing with the latter type of Federal possessions are not in point in any event.

ARGUMENT

A. No Denial of Full Faith and Credit.

I

THE HOLDING OF THIS CASE NOT INCONSISTENT WITH HOLDINGS IN BRADFORD ELECTRIC COMPANY AND OHIO VS. CHATTANOOGA, ETC., COMPANY CASES.

Although it is the general rule that the refusal of one State to apply the law of another State is not ordinarily a denial of full faith and credit (46 Harvard Law Review 291, and cases cited therein), this court has held in the case of *Bradford Electric Co.* vs. *Clapper,* 286 U. S. 145, that under certain circumstances it may be a denial of full faith and credit by one State to refuse to apply the workmen's compensation act of another State. This would seem to be an extension of the doctrine as already applied to a narrowly defined group of cases on insurance statutes. (46 Harvard Law Review 291.)

This court in the *Bradford* case, *supra,* however, carefully delimited its opinion, and we submit that neither the principles nor the facts of that case call for a reversal of the decision of the California Supreme Court in this case.

(a) Principle of Bradford Case Does Not Apply.

(1) *Bradford Case Limited to "Exclusive" Statute.*

In the *Bradford* case, *supra*, this court was considering the effect of the Vermont statute upon a state of facts wherein the contract of employment had been made in Vermont and the employee, whose duties occasionally called him into New Hampshire, was injured in New Hampshire. The Vermont Workmen's Compensation Act contains the following provision:

> "Sec. 5774. *Right To Compensation Exclusive.* The rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury. Employers who hire workmen within this state, may agree with such workmen that the remedies under the provisions of this chapter *shall be exclusive as regards injuries received outside this state* by accident arising out of or in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement." (Italics ours.)

The significant words in the Vermont statute are contained in the last sentence of section 5774, which states that the remedies under the Workmen's

Compensation Act "shall be exclusive as regards injuries received outside this State." This court stated that the provisions in the Vermont act were so clear as to leave no room for interpretation, and that it definitely provided that the Vermont act and the Vermont act alone should be the one to be applied when set up as a defense under the circumstances of that case where the contract of employment was made and the principal employment was in Vermont but the injury occurred and the suit was brought in New Hampshire. This court stated:

> "It clearly was the purpose of the Vermont Act to preclude any recovery by proceedings brought in another State for injuries received in the course of a Vermont employment. The provisions of the Act leave no room for construction."

See also *Ohio* vs. *Chattanooga Boiler Co.*, 289 U. S. 439.

It should be noted that the first sentence of section 5774 of the Vermont act is the counterpart of section 6 of the California act and of section 6859 of the Tennessee act, both of which latter sections, as we shall hereinafter show, have been construed as not making the respective acts "exclusive." The last sentence of section 5774 of the Vermont act is unlike anything contained in the workmen's compensation acts of Tennessee, California and Alaska, and it was the wording of this

sentence, we submit, that caused the Vermont act to be construed as "exclusive."

(2) *The California Workmen's Compensation Act is not "Exclusive."*

Appellant contends that the California Workmen's Compensation Act and the Alaska act are "exclusive" and then relies upon the principle of the *Bradford* case, *supra,* as holding that California must accord full faith and credit to the Workmen's Compensation Act of Alaska. We submit that the California Workmen's Compensation Act is not "exclusive." Section 6 of the California act provides as follows:

> "Sec. 6. Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death. * * *" (C. 586 Cal. Stat. 1917)

This provision of the California act contains no statement such as that contained in the Vermont act, which would preclude recovery by proceedings brought in another State for injuries received in the course of a California employment. It certainly does not so clearly express such an intent as to leave no room for interpretation. (*Ohio* vs. *Chattanooga Boiler Co., supra.*)

In the case of *Ohio* vs. *Chattanooga Boiler & Tank Co.*, 289 U. S. 439, 53 Sup. Ct. 663, this court considered sections 6870 and 6859 of the Tennessee Workmen's Compensation Law. This court stated at page 443:

> "It is true that it provides that 'when an accident happens while the employe is elsewhere than in this State, which would entitle him or his dependents to compensation had it happened in this State, the employe or his dependents shall be entitled to compensation under this act if the contract of employment was made in this State, unless otherwise expressly provided by said contract,' *Tenn. Code,* Sec. 6870; and that 'the rights and remedies herein granted to an employe subject to this Act on account of personal injury or death by accident shall exclude other rights and remedies of such employee, his personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death.' Id., Sec. 6859. But, as construed and applied by the highest court of Tennessee, the statute does not preclude recovery under the law of another State. And the full faith and credit clause does does not require that greater effect be given the Tennessee statutes elsewhere than is given in the courts of that State."

As pointed out by this court, sections 6859, 6870 of the Tennessee act did not plainly state that the Tennessee act was "exclusive"; and furthermore, the highest court of Tennessee had interpreted said

section as not precluding proceedings in other states.

We submit that sections 6 and 58 of the California Workmen's Compensation Law are very similar to sections 6859 and 6870 of the Tennessee Workmen's Compensation Act, and are unlike section 5774 of the Vermont Workmen's Compensation Act. The California act does not state in unmistakable terms that it shall be the exclusive remedy where the injury occurs in another State and that no action for compensation may be instituted under the law of the State of injury. Moreover, it has not been so interpreted by the highest court of the State of California. In the case now before this court, the California Supreme Court held (R. 73) that both the laws of the Territory of Alaska and the laws of California could be upheld; in other words, it held that had the employee, Palma, filed his application for compensation in Alaska, the territorial court in Alaska could have applied the Alaska act. We submit that there could not be a clearer interpretation than this by the California Supreme Court that section 6 of the California act was not intended to be "exclusive" as is the Vermont act. And under the full faith and credit clause it is not required that a greater or different effect be given elsewhere to the California law than is given in the California courts. (*Ohio* vs. *Chattanooga Boiler Co.*, 289 U. S. 439; *Allen* vs. *Alleghany Co.*, 196 U. S. 458, 465; *Robertson* vs. *Pickrell*, 109 U. S.

608; *Board of Public Works* vs. *Columbia College,* 17 Wall. 521, 529.)

It is clear from the foregoing that the California act does not, either by its own wording or by judicial interpretation, preclude recovery by proceedings in another State for injuries received in the course of a California employment.

(3) *The Alaska Act Is Not "Exclusive."*

Section 10 of the Workmen's Compensation Act of Alaska (Chapter 25, Session Laws of Alaska, 1929) is very similar to section 6859 of the Tennessee act considered in the case of *Ohio* vs. *Chattanooga etc. Co., supra,* and to section 6 of the California Workmen's Compensation Act. Section 10 of the Alaska act provides as follows:

> "Section 10. The right to compensation for an injury and the remedy therefor granted by this Act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and no rights or remedies, except those provided for by this Act, shall accrue to employees entitled to compensation under this Act while it is in effect; nor shall any right or remedy, except those provided for by this Act accrue to the personal or legal representative, dependents, beneficiaries under this act, or next of kin of such employee."

Said section contains no wording which in any way attempts to preclude recovery by proceedings

brought in another jurisdiction, as did section 5774 of the Vermont Workmen's Compensation Act.

Since it is clear that almost precisely similar sections in the Tennessee and California acts have been interpreted as not being "exclusive," it is difficult to see how section 10 of the Alaska act could be held to preclude recovery in proceedings brought in another State. Appellant has pointed to no decision of the courts of Alaska so interpreting said section, and in the absence of such decisions it can not be presumed that the courts would so interpret it. And certainly it can not be said that the section so clearly expresses the intent to make the act "exclusive" that the section leaves no room for construction.

Section 28 of the Alaska act provided that no agreement by an employee to waive his rights to compensation under the act shall be valid and that no agreement whereby an employer attempts to exempt himself from the burden of the act shall be valid, with certain exceptions. This section is similar to section 6877 of the Tennessee act and to section 27 (a) of the California act. Since both the Tennessee and the California acts have been held not to be "exclusive" and since both acts contain a section similar to that of section 28 of the Alaska act, section 28 does not in any way aid appellant's contention to the effect that the Alaska act is "exclusive."

Nor does section 25 of the Alaska act lend aid to appellant's contention. That section, as the

California Supreme Court has pointed out (R. 68), does not in any way prevent an action from being instituted in a jurisdiction other than Alaska for compensation under the Workmen's Compensation Act of the other jurisdiction for an injury sustained in Alaska; it merely states that any action for compensation under the *Alaska act* must be prosecuted in the Alaskan courts.

From the foregoing we believe it clear that the Alaska Workmen's Compensation Act may not be said to be "exclusive."

(4) *Appellant's Argument Re "Exclusiveness" Must Fall.*

We submit that it is clear from the foregoing that since neither the Alaska act nor the California act are "exclusive" in the sense used by this court in the *Bradford* case, *supra,* in considering the Vermont statute, Appellant's argument in this respect must fail. Appellant has argued that since the two acts are "exclusive," the holding of the Supreme Court of California that both statutes may be upheld in the situation involved in the case at bar is unsound. We submit, however, that inasmuch as we have shown that neither act is "exclusive," this showing entirely disposes of appellant's argument in this respect.

(b) Bradford and Ohio vs. Chattanooga Company Cases Did Not Decide Question Herein.

Appellant places such great reliance upon the *Bradford* case, *supra,* that it is well to note that the factual situation in that case is entirely different from the facts in the case at bar. If the facts, generally speaking, were that the contract had been made in California, and the employee filed his claim in Alaska after sustaining an injury in Alaska, and the court of Alaska applied the laws of Alaska to the case, then the general facts would be similar to the general facts in the *Bradford* case, *supra,* and it could then be inquired under the principle of the *Bradford* case as to whether or not the Territory of Alaska had denied full faith and credit to the California act, assuming, of course, that the California act had been pleaded in defense. Or, if the contract had been made in Alaska and the injury was sustained in California and the employee filed his claim in California, and the California Commission applied the law of California to the case despite the proper defense of the employer, it would be fitting in that case to inquire as to whether or not the California Commission had denied full faith and credit to the laws of Alaska.

But the situation in the case at bar is entirely different, for in this case the contract of employment (or the relationship of employer and employee) was created in California and the claim was instituted before the California Commission

after the employee had been injured in Alaska and had returned to California. Appellant's contention is, therefore, an attempt to apply the rule of the *Bradford* case, *supra,* to an entirely different set of facts. It becomes important, therefore, to analyze the precise holding and facts of the *Bradford* case in order to see whether it may be so applied.

The *Bradford* case, in our opinion, holds that full faith and credit must be accorded to the (1) "exclusive" law of the State, (2) where the contract was made and the major incidents of the employment are located in that State, (3) where that law has been pleaded as a defense in a suit in another State. But does it go so far as to say that full faith and credit must be accorded to a State law which is (1) not exclusive, and (2) in which only a portion of the major incidents of the employment are located? We think not.

In the *Bradford* case, *supra,* it was held that full faith and credit should be accorded to the law of Vermont in which the contract was made. Here the contract was made in California and it is asked that full faith and credit be accorded to the law of Alaska. The Vermont statute is "exclusive"; the Alaska statute is not. The action was filed in the State of injury in the *Bradford* case; here it was filed in the State of contract. In the *Bradford* case the law of the place of contract was set up as a defense, while in the case at bar the law of the place of injury was set up as a defense by the employer.

That being so, the *Bradford* case can not apply to the situation at bar unless it be said that the *Bradford* case has enunciated the principle that the full faith and credit clause is to be invoked in all cases involving workmen's compensation laws where the injury has happened in one State and the contract of employment has been made in another, and in case of suit being brought, the law of the other State, no matter which one it happens to be (i.e., law of place of contract or law of place of injury) is set up as the defense. Such a broad principle, we submit, this court has not enunciated, and this, we believe, is clearly shown in the *Ohio* vs. *Chattanooga etc. Co.* case, *supra,* wherein the court points out the limitations of its holding in the *Bradford* case.

Certainly the *Bradford* case does not hold that a State where a contract was made (or status had its inception), where the employment began and ended, and where the wage was paid may not apply its own compensation act; in fact, the law of the State of contract was therein given application despite the fact that the injury was received outside its borders.

This court in the *Bradford* case was considering a situation wherein the major incidents of the employment were in the State of contract and where the State of injury had only a casual interest in the employment. If the amount of interest that the two states have in the employment was an important element in the *Bradford* case and influenced the court in holding that the law of the State of the contract

should be the one to be given effect, we submit that under such a rule the California act is the one to be given effect. As the California Supreme Court has pointed out, although all the work was to be performed in Alaska, the State of injury, practically all the other major incidents were centered in California: the relationship was entered into in the latter State, the employment began and ended there, and the wages were paid there. Under these circumstances California at no time lost all interest or control in the employment. The interest of Alaska is comparable to that of New Hampshire in the *Bradford* case, *supra,* that is, it was scarcely more than casual. While all the actual work contemplated was to be done in Alaska, the employees were there only temporarily during the short fishing season; they were not citizens or even residents; they had no dependents there and were not to remain there after the work was completed. Because of these facts, and the additional consideration that it is practically impossible for such an employee to pursue his remedy under the Alaska act in case of injury, the California court concluded that California had at least as much, if not a greater interest in the particular employment than did Alaska.

The California Supreme Court after considering the *Bradford* and *Ohio* vs. *Chattanooga, etc., Co.* cases, stated (R. 76):

> "The conclusion reached herein is not inconsistent with those cases, which have left open the question of what law is applicable where the

state of injury is the state where the major incidents of the employment are located although the contract is made elsewhere."

Since the California court considered that its decision was contra to neither the *Bradford* case nor the *Ohio* vs. *Chattanooga, etc., Co.* case, *supra,* it felt that its refusal to recognize the Alaska law could not be construed to be a denial of full faith and credit. It pointed out that there was still a field or sphere not covered by those decisions, and while the California court did not attempt to decide that there could be under no circumstances a denial of full faith and credit where the State of injury is the State where most of the work was to be done although the contract of employment was made elsewhere, it made it clear that under the circumstances of the special type of case before it, and in that particular class of case only, it felt that the law of the State which had control over the inception was to govern. In other words, the California court felt that under the peculiar facts of the case before it, the problem was one of conflict of laws and not one under the full faith and credit clause of the United States Constitution.

(c) Answer to Specific Contentions of Appellant.

(1) *Alaska Act Can Not Be Administered by California Commission.*

As the California Supreme Court has pointed out (R. 68), section 25 of the Alaska act does not

prevent an action from being instituted in another jurisdiction for compensation under the workmen's compensation act of another State for an injury sustained in Alaska, but it does specifically say that any action for compensation under the *Alaska act* must be prosecuted in the Alaskan courts. Hence, the California Commission can not administer the Alaska act. Under such circumstances California would have to deny relief to an employee filing a suit under the Alaska act before the California Commission, but such denial of relief would not constitute a denial of full faith and credit. (*Chambers* vs. *Baltimore & Ohio R. Co.*, 207 U. S. 142, 148, 149; *Bradford Electric, etc., Co.* vs. *Clapper, supra.*)

This court in the *Bradford* case, *supra,* stated that a plaintiff who seeks to enforce a cause of action conferred by the laws of another State is in a different position from one who sets up the same statute by way of defense. It is said that in refusing to enforce the cause of action prosecuted by the plaintiff, such refusal merely denies a remedy, leaving unimpaired the plaintiff's substantive right so that he is free to enforce it elsewhere, and to refuse to give effect to a substantive defense under certain circumstances subjects the defense to irremedial liability and may not be done. We submit that in the present case, although the Alaska act has been brought into this case by way of defense, for the California Commission to give up its own jurisdiction and thus force the employee

to go to Alaska to pursue his remedy there under the Alaska act is to subject the *employee* to irremedial injury. Under the facts and circumstances of this case, such a refusal by the California Commission works no injury upon the employer, for this employer is already subject to the liabilities under the California act for its other employees, and it may or may not elect as it chooses to subject itself to the provisions of the Alaska act. Under the peculiar facts of this case, if the California Commission denies the employee his remedy under the California act, it is in practical effect a denial of all remedy to him.

(2) *No Injunction Could Be Maintained in Alaska to Enjoin Proceedings Elsewhere.*

Appellant states (brief, p. 13) that a proceeding could have been maintained in Alaska to enjoin Palma from proceeding elsewhere; that an injunction decree in such suit would have been entitled to full faith and credit and, therefore, the defense based on the Alaska statute should be entitled to full faith and credit. In support of this statement, appellant cites the *Bradford* case, *supra*. This contention, however, begs the question for it assumes that the Alaska act is "exclusive" as was the Vermont statute discussed in the *Bradford* case. We have shown, however, that the Alaska act is not "exclusive" and this contention is therefore without merit.

(3) *The Contract of Employment Was Made in California.*

Appellant attempts to show (brief, p. 15) that the contract was made on shipboard in San Francisco Bay and, hence, it was not made in California, in substantiation of which appellant refers to a statement of facts in the California Supreme Court opinion in which it states that the contract was signed on board ship. The testimony of Palma (R. 44, 47) clearly shows that the contract was signed on the *wharf* before boarding the ship. The California court was clearly in error in making this statement and the true record must be relied on.

(4) *The Effect of Sustaining Appellant's Defense, Against Public Policy of California.*

A plaintiff suing in one State on a statutory cause of action arising in another State may be denied relief because the enforcement of the right conferred is obnoxious to the public policy of the forum. (*Bothwell* vs. *Buckbee Mears Co.*, 275 U. S. 274; *Union Trust Co.* vs. *Grossman*, 245 U. S. 412.)

The California Supreme Court in this case has clearly stated that the effect of giving recognition to the employer's defense in this case would be prejudicial to the large class of employees engaged by the company and sent up to Alaska every year, who would, under such circumstances, undoubtedly

become public charges upon the State of California since they would be denied a remedy under the California act and would be unable to prosecute their remedy under the Alaska act. For this reason it is submitted that the California court was justified in holding that the defense of the employer was not to be maintained, and its holding to that effect is not a denial of full faith and credit.

II

PROBLEM IN THIS CASE IS ONE OF CONFLICT OF LAWS

We believe that we have already demonstrated that the full faith and credit clause of the United States Constitution has no application to the case at bar, and we come now to a consideration of the basis for the decision of the California Supreme Court.

(1) *California Act Has "Extraterritorial" Effect Under Facts in This Case.*

The first question that the California Supreme Court considered was stated by it as follows (R. 69):

> "Whether the making of the contract of employment in this state is a satisfactory and sufficient basis for the creation by the California legislature of the right of compensation for an injury received beyond its borders, even though the services contracted for were to be wholly performed outside the state."

The court noted that while an award under section 58 of the California act for an injury received outside the State where the contract of employment had been made within the State had been sustained in the case of *Quong Ham Wah* vs. *Industrial Accident Commission,* 184 Cal. 26, 192 Pac. 1021 (certiorari denied by the United States Supreme Court, 255 U. S. 445), the foregoing question had not been presented to the California court in that case. The court then reached the following conclusion (R. 71):

> "We are of the opinion that the creation of the status under the laws of this state is a sufficient jurisdictional basis for the regulation of that relationship within this state and the creation of incidents thereto which will be recognized within this state, even though the relation was entered into for purposes connected solely with the rendition of services in another state."

In reaching the foregoing conclusion, the California Supreme Court used the following reasoning. The court noted that where the duty to pay compensation is contractual, as under the optional or elective acts, the rights of the injured party, wherever the injury is received, may be controlled by the law of the place of contract. The California act being compulsory, however, this line of reasoning can not be followed. The court pointed out that it is now definitely settled that the rights of the employee and the liabilities of the employer under the California compulsory act are not found on contract but are

statutory rights and duties arising from the employer-employee status. (Citing *North Alaska Salmon Co.* vs. *Pillsbury,* 174 Cal. 1, 162 Pac. 93; *Quong Ham Wah Co.* vs. *Industrial Accident Commission,* 184 Cal. 26, 192 Pac. 1021; 31 *Harvard Law Review* 619.) The court then quoted from its opinion in the *Quong Ham Wah* case, *supra,* wherein it was held that despite the fact that California's act was compulsory, it may be held to apply to injuries received outside the State. The *Quong Ham Wah* case in this respect used the following language (p. 36):

> "The contract creates a relationship under the sanction of the law and the same law attaches as an incident thereto an obligation to compensate for injuries sustained abroad amounting to a sort of compulsory insurance. The legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state."

The foregoing, we believe, is now the accepted theory of the basis for the so-called extraterritorial effect of compulsory workmen's compensation acts.

The court then pointed out that the State of California had a social interest in the existence within its borders of the employer-employee relationship,

and that the State may under its police power impose reasonable regulations upon the creation of that relationship within the State. The court stated (R. 72):

> "We consider this a reasonable regulation having a direct relation to the protection of the public, especially under the facts of the present case, since the employment was to both commence and terminate in this state. Palma was, under the contract of employment, to be transported from San Francisco to Alaska and back, and was to be paid off on his return to San Francisco."

(2) *Principle of Conflict of Laws Involved.*

The California Supreme Court in its opinion noted that while it had considered in the *Quong Ham Wah* case, *supra*, the nature of the "extra-territorial" effect to be given the act under section 58, in said case the law of the place of injury had not been set up as a defense and, hence, the contention of appellant that the Alaska act should govern the determination of Palma's claim had not been decided in the *Quong Ham Wah* case. The court stated that this problem was essentially one in conflict of laws and came to the conclusion that the jurisdiction of both Alaska and California may be sustained, the one upon the basis of control of the status at the time of the injury, the other upon the basis of control at its inception.

The court stated that it had been referred to many decisions applying the rule that where the contract is for services to be performed exclusively abroad and injuries received there, the law of the place of injury will be applied. The court reviewed these cases and concluded that most of them dealt with the various State acts as intending or not intending a recovery under such circumstances. It also considered other cases under elective laws where it had been held that the law of place of injury applied because the parties contracted with reference to the law of the other State. It is then stated, however, that since the California act was compulsory, it could not be said, as under the elective acts, that the parties may have contracted with reference to the law of the foreign State since under the compulsory act the law becomes a part of their contract made in the State having a compulsory act.

The court then properly holds that under section 27 (a) of the California Workmen's Compensation Act attempted selection of the Alaska act as the governing law in section 11 of the contract is not available to the employer.

The court stated that its holding in this case was in accordance with the general rule enunciated in the proposed final draft of section 434 of the Restatement of the Conflict of Laws of American Law Institute. The court then gave its conclusion and narrowed its holding to apply only to the

special class of acts involved herein. It stated as follows (R. 75):

> "Moreover, whatever may be the correct rule in conflict of laws to be applied in the ordinary case of a contract of employment made in this state, to be performed exclusively in another jurisdiction, such contracts as the present one, which hire itinerant labor in large groups to be transported out of the state for seasonal work and returned to this state at the end of the season, *constitute a special class of employment contracts* in which the state of hiring has an interest at least as substantial as that of the state in which the temporary and seasonal work is to be performed. The laborer injured in the course of such employment is, by the terms of his contract of hire, to be returned to that state to become a charge upon it if he can not obtain compensation or take care of himself. To leave the applicant to his remedy in Alaska in such a case would create a great hardship. In this class of employment the employer exercises a great control over the presence of the applicant in either jurisdiction. Should he stay to prosecute his claim in the jurisdiction of the injury it is quite likely that he would lose his return transportation." (Italics ours.)

What the court has stated with respect to the hardships which fall upon the employee in the event that he were left to his remedy in Alaska is fully borne out by the facts of the case. It is to be remembered that the contract contemplated that the employee was to be returned to California at

the end of the season and that he was to be paid off upon reaching San Francisco. The balance due the men on arriving in San Francisco was exceptionally small. The record shows (R. 54), that the season's wages of Palma and the other men who were transported on the Steamer "Chirikoff" was $140; and that Palma received $2.50 in cash on sailing; that his hotel bill, pawn tickets, board, cash, and season's outfit amounted to $62.60. These two sums deducted from the season's wages left the employee $74.90, which sum, when reduced by necessary cash advances and expenditures in Alaska, usually left the employee a balance of $15 or $20 to be received when he arrived in San Francisco. Since it is impossible for the California Commission to apply the Workmen's Compensation Act of Alaska (see opinion of California Supreme Court, R. 68), Appellant's view of the case would force the employee to return to Alaska or attempt to prosecute his claim there with no financial ability to do so. Should he stay to prosecute his claim in Alaska, it is quite likely that, as the court points out in its opinion, he would lose his return transportation and, in addition, it is quite likely that he would lose the remainder of his wages, since the contract specified that the wages were to be paid on the return of the expedition to San Francisco. Under these circumstances, if he remained in Alaska to prosecute his claim it would work a great hardship upon him due to the absence of funds to maintain himself.

We submit that the foregoing reasoning of the California Supreme Court is well founded and fully supported by the cases cited in its opinion; we submit, further, that its conclusion that there was no constitutional problem relative to the full faith and credit clause of the Constitution of the United States was correct, and that the only problem involved was one of conflict of laws.

B. No Denial of Due Process.

In this connection the California Supreme Court used the following words: "Nor is there any denial of due process and equal protection by reason of extraterritoriality." (R. 69.)

The California court decided that the creation of the status or relationship within its borders was a sufficient basis for the regulation of that relationship within the State. One of the incidents of that regulation within the State was that an employer may not by any contract, rule, or regulation, absolve himself from liability under the act once having subjected himself to it. This is so by virtue of section 27 (a) of the California Workmen's Compensation Act, which section has been interpreted and upheld in *Terminal Railways* vs. *Industrial Accident Commission,* 180 Cal. 121, 127, 179 Pac. 386; *Hines* vs. *Industrial Accident Commission,* 182 Cal. 359.

The purpose of section 27 (a) of the California act (as applied in the foregoing cases to purely

local employments) is to prevent an employer from escaping his liability by some form of release or agreement entered into with the employee. Such a regulation is, of course, a fundamental part of a compulsory act; it is in fact already an integral part of compulsory acts without a special section to that effect, for if the relationship is entered into by force of law, the parties can not by their own will avoid the liabilities of such a relationship.

Now, if the regulation imposed by section 27 (a) applies to purely local employments, it follows that the same regulation also applies to the employment in question herein. This is necessarily so from the fact that the highest court of California has decided that the creation of the status within the State, plus certain other features of this particular employment, is a sufficient basis for giving the State jurisdiction and control of the relationship under its compulsory act even though the injuries occur outside the State. (See California Supreme Court opinion, R. 71.)

Nor does the fact that the California act is a compulsory one alter the situation, as appellant seems to contend. This part of appellant's argument is merely a reiteration of its arguments under the first point in its brief, for it again cites many of the decisions of the various State courts which have interpreted their own statutes as not intending to include injuries outside of the State where a large portion of the incidents of the employment were located outside the State. That these cases

are only authorities in so far as they are interpretations of the intention of the various State statutes is clear. That this is so is clearly shown in the following statement from 3 A. L. R. 1351:

> "* * * Compensation statutes may be divided into two general classes; those which are compulsory and those which are elective; but this fundamental distinction does not afford any guide in determining whether or not the statutes are to be considered as applying to injuries occurring outside of the state, since statutes of both classes have been construed to apply and not to apply to such injuries. Consequently the decisions of one state have but little weight in determining the proper construction of the statutes of another state. This point has been recognized by the supreme court of Iowa.
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> "Thus, in *Pierce v. Bekins Van & Storage Co.* (Iowa), 172 N. W. 191, the court said: 'We conclude that resort to the decisions in other jurisdictions would be of very doubtful value in interpreting the Iowa act, and we shall refrain from so resorting.'"

Moreover, the question as to whether or not the California act, which is compulsory, has the so-called "extraterritorial" effect is settled by the decision in the case of *Quong Ham Wah* vs. *Industrial Accident Commission,* 184 Cal. 26, 192 Pac. 102 (certiorari denied by the United States Supreme Court, 255 U. S. 445).

As to appellant's argument with relation to the invalidation of the contract of the parties, this

argument again brings us back to the original point. Appellant states that the Fourteenth Amendment guarantees individual freedom of contract against unreasonable limitations by the states. That is true, but the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint, not immunity from reasonable regulation to safeguard the public interest. (*Miller* vs. *Wilson,* 236 U. S. 373; *Knoxville* vs. *Harbison,* 183 U. S. 13, 22.)

The Fourteenth Amendment does not guarantee to a citizen the right to contract within his State in violation of its laws. (*Hooper* vs. *California,* 155 U. S. 648.) And if the regulation in question is a reasonable one *within* the State, that is all with which we need be concerned for it is the control of status *within* the State which under certain circumstances gives the State power over that status concerning certain rights which have arisen by reason of certain acts abroad. The California Supreme Court in the *Quong Ham Wah* case, *supra,* has summed up the situation as follows: (p. 36.)

> "The legislature may lawfully impose that right and duty upon those operating under a contract subject to the legislative power, and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state."

We may say a word here relative to the statement of appellant concerning the employer's difficulty in making a defense where the employee files his claim in California. That argument lacks conviction when those difficulties are compared with the real difficulties of the employee in attempting to pursue the remedy left to him if California does not take jurisdiction. What about the difficulty of the employee in starting suit in Alaska if he takes his transportation back to San Francisco in order to collect his wages? How is he to prosecute his claim from that distance? Is he to be forced to return to Alaska to file suit? Is he to stay in Alaska if injured and thus lose his transportation back to California? Is he to stay in Alaska without hope of collecting his wages? If he stays in Alaska do not all of his witnesses leave for California? If he attempts to prosecute his case from California, have not his witnesses, to use Appellant's word "scattered"? On this score we feel that the employee's lot is far worse than that of the employer, for, as the Supreme Court of California has indicated, this particular type of employment is one over which the employer has much more control than has an employer in employments of a less unique character.

C. No Interference With Federal Control of Territories.

In respect to the argument under this head, the Supreme Court of California remarked (R. 69):

> "* * * if California has not attempted an extraterritorial regulation of the incidents of the employment, petitioner's (Appellant's) argument relative to invasion of the exclusive jurisdiction of the federal government to regulate employment in Alaska must fail, * * *"

As we have already shown, California has not attempted such an invasion of the sovereignty of Alaska; it has merely assumed control over an employment which it considered to be a California employment by reason of certain important incidents of that employment which were located within the State. The argument under this heading, therefore, leads back to the same point considered under the foregoing headings and, since we feel that the argument has been fully presented previously, we shall not again present the arguments here.

Furthermore, appellant's argument under this heading shows a complete failure to distinguish between the political status of Federal possessions of the "organized" type such as Alaska, in which a form of government has been set up by Congress and in which it is said that the Constitution of the United States "shall have the same force and effect within the said Territory as elsewhere in the

United States," and such Federal possessions held for military or naval purposes as the Puget Sound Navy Yard considered in the case of *Murray* vs. *Joe Gerrick & Co.*, 291 U. S., 315 cited by Appellant. We are not here concerned with a Federal possession such as a military or naval reservation.

The distinction, however, is immaterial since California has in no way attempted to interfere with the sovereignty of the Federal government proper, or with sovereignty of the Territory of Alaska. California merely assumed control over an employment which it considered to be a California employment by reason of certain important incidents of that employment centered within that State.

CONCLUSION

Appellees believe that they have demonstrated that the award of the Industrial Accident Commission of the State of California and the decision of the Supreme Court of California affirming said award do not (1) deny full faith and credit to the laws of Alaska, (2) in any manner defeat due process, nor (3) interfere in any respect with the Federal control of territories.

It is therefore respectfully submitted that the decision of the Supreme Court of California should be affirmed.

Dated: San Francisco,
January 5, 1935.

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